a foreign domicile.[3] (2) Resulting from this allegiance the state owes him a duty of protection even while abroad. (3) To a certain extent the state is responsible to foreign nations for his acts.[4] The allegiance of the Porto Ricans was thus clearly one of the most important incidents of Spain's sovereignty in the island. Spain might conceivably have retained it by an express reservation, but in the absence of express reservation, this incident of sovereignty passes in the general transfer. The case becomes all the clearer if, as is true of a grant between private persons, a treaty is to be construed with reference to the nature of its subject matter. It is inconceivable that Spain would wish to retain the obligations, or that the United States would permit her to retain the rights resulting from allegiance, and it is somewhat doubtful whether other nations would have recognized such an anomalous situation even if it had been created.

It seems clear then that the Porto Ricans are subjects. Whether they are citizens is a further question. The constitution confers certain rights only on citizens;[5] for example, the right not to be deprived of the ballot on account of race, color, or previous condition of servitude, and if the word "people" as used in the constitution is a term including citizens only, as appears probable from its use in the preamble and in the tenth amendment, the rights of assembly, petition, to bear arms, and immunity from search except by properly issued warrant, are also rights which belong only to citizens. It is possible for a state to have complete sovereignty over peoples who have no such privileges, and it would follow that no such privileges were conferred by the bare transfer of sovereignty from Spain to the United States. Whether the right of citizenship was conferred by the operation of the constitution within the island, is a question not yet finally settled. Judging from the trend of the law as indicated by the Insular Cases,[6] it will probably be decided in the negative, and the holding of the New York Supreme Court that a resident Porto Rican is not a citizen, and consequently not entitled to vote, ultimately adopted.[7]

RIGHT TO FOLLOW TRUST MONEY CONVERTED BY A BANK. — When a bank mingles with its general assets money which it holds as trustee, and then becomes insolvent, the *cestui's* right to follow the trust *res* is important. The older authorities generally held that this right existed only so long as the specific thing, or some definite thing into which it had been converted, could be traced. When the trust *res* was money, and was indistinguishably mixed with other money, it was commonly said that the right to follow it was gone. In Knatchbull *v.* Hallett,[1] however, where a trustee had deposited trust money with money of his own in a bank, the English Court of Appeals held, first, that tracing the money into a definite fund was sufficient identification to allow the *cestui* to follow it, and, second, that in such a case, when the trustee had drawn repeatedly on the deposit, the presumption was that he had drawn out his own money, so that the residue included the trust *res*.

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[3] East, P. C. c. 2, § 1.
[4] See Charge to Grand Jury, 5 McLean (U. S. C. C.) 306, 312.
[5] Slaughter House Cases, 16 Wall. (U. S.) 36, 78.
[6] *Cf.* Hawaii *v.* Mankichi, 23 Sup. Ct. Rep. 787.
[7] People *v.* Board of Assessors, 67 N. Y. Supp. 236.

[1] 13 Ch. D. 696.

Although most American courts have followed this so-called "modern doctrine of equity," [2] when they have come to apply it to cases where the trustee is a bank which has mingled the trust money with its own assets and then become insolvent, the results have been diverse. They seem to fall into three groups. (1) Some allow the *cestui* to follow his money only when he can show that the cash assets actually received by the assignee included the amount of his trust money.[3] (2) Others enforce the trust whenever it can be shown that its proceeds went into the cash assets of the insolvent estate, irrespective of subsequent transactions, or the amount which actually went to the assignee.[4] (3) Still others impose a trust upon the general assets, not merely the cash, upon proof that the trust property went to enrich the estate.[5]

This last rule obviously is not supported by either principle of Knatchbull *v.* Hallet. The proceeds have never even gone into a definite fund. It is often unjust, too, for when the trust money is used in paying debts, those debts are paid in full, with the result that some creditors are preferred at the expense of others. The second rule, on the other hand, seems to be supported by both the English principles. The trust money has been traced into a definite fund, and subsequent dealing with that fund ought not to affect the trust property, according to the presumption there set forth, that a trustee will deal first with his own property. But although in that case such a presumption was justified, in the case of a bank, where both funds are grouped together as assets, and the bank expects to use them indiscriminately in the course of business, any such presumption of intention is contrary to the facts.[6] The second principle expounded in Knatchbull *v.* Hallett cannot apply to any of these cases, so those American courts which follow the first rule above laid down seem to be justified. In the case of a bank the *cestui* should be allowed to recover only when he can trace the proceeds of the trust into the funds actually received by the assignee. This is the result recently reached in a Georgia decision, where the funds coming to the assignee were less than the amount of the trust. *G. Ober & Sons Co.* v. *Cochran*, 45 S. E. Rep. 382. As soon as the course of business has so changed the character or amount of the assets that they can no longer fairly be said to contain the trust funds, the *cestui's* rights to follow the *res* should be lost.

ELECTION OF REMEDY AGAINST AGENT OR UNDISCLOSED PRINCIPAL. — It is well established that one who deals with the agent of an undisclosed principal has, upon the discovery of the relation, two remedies at his disposal.[1] First, upon the ground that the contract is in reality that of the principal and not intended to bind the agent, he may recover from the principal. Second, by insisting that the contract was made by the agent as an independent party, he may hold the agent. In most jurisdictions, he may not only begin his action against either,[2] but he is not thereby precluded

[2] Boone, etc., Bk. *v.* Latimer, 67 Fed. Rep. 27. *Contra*, Portland, etc., Co. *v.* Locke, 73 Me. 370.
[3] Spokane County *v.* First National Bk., 68 Fed. Rep. 979.
[4] Peak *v.* Ellicott, 30 Kan. 156; Continental Bank *v.* Weems, 69 Tex. 489.
[5] Davenport Plow Co. *v.* Lamp, 80 Ia. 722; Harrison *v.* Smith, 83 Mo. 210
[6] Phila., etc., Bk. *v.* Dowd, 38 Fed. Rep. 172.

[1] Pope *v.* Meadow Springs Distilling Co., 20 Fed. Rep. 35.
[2] Cobb *v.* Knapp, 71 N. Y. 348.